ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
OCT 18 2001
CLERK, U.S. DISTRICT COURT
By ______ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MALACO, INC.

Plaintiff,

v. : **3-00CV2648-P**
CASE NO.

JOSEPH COOPER & DOROTHY COSTANZO D/B/A GROUP HITMAKERS, INC. AND CLOSE-UP PRODUCTIONS

Defendants

DEFENDANTS' MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

TO THE HONORABLE JORGE A. SOLIS UNITED STATES DISTRICT JUDGE:

COME NOW: Joseph Cooper file this Motion to Dismiss the Compliant of Plaintiff Malaco, Inc.

As good and sufficient grounds said Defendants would respectfully show this court that the Plaintiff Malaco, Inc. was aware of the said Video from day one and knowing submitted false Information to this honorable court.

A. Summary of Argument

The Court has not been made aware of all of the facts in this case. The Plaintiffs in this case have failed to tell the truth and nothing but the truth. The Defendants pray that after the reading of this **MOTION TO DISMISS** that the court will re-access the injunction that was handed down.

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B. Background

Plaintiff is Malaco, Inc. Defendants are Joseph Cooper and Dorothy Costanzo.

Plaintiff sued Defendants and had discussed a business agreement with the Defendants on more than several occasions. To clarify the issue of Tommy Couch's knowledge of the Johnnie Taylor Live at The Longhorn Ballroom. Johnnie Taylor commissioned Joseph Cooper to video his live performance at the Longhorn Ballroom with the understanding that Johnnie Taylor would use the video to enhance his career. Johnnie Taylor paid Joseph Cooper January 27, 1989 to do some promos for the up and coming show. Johnnie Taylor also told Joseph Cooper to produce the live video and bring it to his office for viewing. Joseph Cooper carried the raw tape to Johnnie Taylor's office for viewing. Immediately after Johnnie Taylor finished viewing the video tape he whirled around in his chair and called Tommy Couch the President of MALACO, INC. At this time MALACO, INC. was totally aware of the video in question **(JOHNNIE TAYLOR LIVE AT THE LONGHORN BALLROOM).**

Johnnie Taylor told Tommy Couch that this is a good video, I am really working and you need to trash the Live at The Fairmount Video and buy this one from this man, (Joseph Cooper). Tommy Couch offered Joseph Cooper $ 10,000.00 for the video, but Joseph Cooper refused his offer. Tommy Couch asked Joseph Cooper to send him a copy of the video Live at The Longhorn Ballroom. Joseph Cooper sent Tommy Couch a VHS 26 minute excerpt taken from five ¾" raw Masters. One each of Johnnie Taylor, Denise LaSalle, and Little Milton.

The Plaintiff MALACO, INC. contends that Joseph Cooper and Dorothy Costanzo has infringed On MALACO's copyright but MALACO did not own the copyrights to the renditions of four Songs:

(A) Wall to Wall;

(B) Still Called the Blues;

(C) Just Because;

(D) I'm Changing.

MALACO did not copyright these four renditions until October 3, 2000. Still Called the Blues was recorded by Johnnie Taylor November, 1984. The other three (3) musical compositions named above were recorded by Johnnie Taylor November, 1985.

These musical renditions were public domain at the time Joseph Cooper recorded the Johnnie Taylor live at The Longhorn Ballroom. MALACO sent an application for the musical Composition to the United States Copyright Office for individual registration sixteen (16) years After Still Called the Blues was recorded. MALACO sent an application for the musical Compositions to the United States Copyright Office for individual registration seventeen (17) Years after Wall to Wall, Just Because and I'm Changing was recorded.

After the death of Johnnie Taylor, Joseph Cooper contacted MALACO, INC. and discussed with Tommy Couch the Johnnie Taylor Live at the Longhorn Ballroom video and was told by Tommy Couch that they wanted to do business with him. Tommy Couch asked Joseph Cooper where had he been that they had been trying to get in touch with him. Tommy Couch told Joseph Cooper that he also wanted any videos that Joseph Cooper may have on any artist that is signed with MALACO, INC.

Wolf Stephenson one of MALACO, INC. associates gave Joseph Cooper the number to their airplane that was at Redbird Airport the day that Johnnie Taylor was funeral zed for Joseph Cooper to put a copy of the Johnnie Taylor Live at the Longhorn Ballroom in the airplane. Wolf Stephenson told Joseph Cooper that MALACO, INC. would contact him after they viewed the video.

After the funeral Joseph Cooper contacted MALACO, INC. to discuss the business agreement to market the Johnnie Taylor Live at the Longhorn Ballroom. Tommy Couch discussed the video with Joseph Cooper and told Joseph Cooper that he was going to discuss the deal with his partners but that they definitely were going to do some type of deal with Joseph Cooper.

Dorothy Costanzo called MALACO, INC. and spoke to Tommy Couch Sr. concerning Johnnie Taylor's death and asked Tommy Couch what was he going to do about the videotape: Johnnie Taylor Live at the Longhorn Ballroom? Tommy Couch told Dorothy Costanzo that he did intend to produce the video to have Joseph Cooper contact him and they would work out a deal. Dorothy Costanzo asked Tommy Couch if he remembered what Johnnie Taylor had told him about the video tape back in 1989 and Tommy Couch replied yes, that Johnnie had told him that the tape was a good one and that they should do something with it.

Tommy Couch was told by Dorothy Costanzo and Joseph Cooper that the video Johnnie Taylor Live at the Longhorn Ballroom was being aired on the radio and television to test market the possibility of potential sales, and to keep Johnnie Taylor's legacy alive. Tommy Couch agreed that airing the promos was a great idea. Tommy Couch did not say stop the promos. Tommy Couch did not say that MALACO, INC. was putting together a videotape on Johnnie Taylor. Tommy Couch led Joseph Cooper and Dorothy Costanzo to believe that he was going to do a financial deal with them and all parties would make money from the Johnnie Taylor Live at the Longhorn Ballroom. Joseph Cooper and Dorothy Costanzo has suffered financial and mental stress as well as public humiliation. Tommy Couch had his attorney send a letter of intimidation to clients that were helping to test market the video.

Prayer

Wherefore, Defendants pray that this court enter a judgment by which Plaintiff relinquishes all so called rights to the Johnnie Taylor Live at the Longhorn Ballroom videotape that Joseph Cooper recorded at the request of the late and great Johnnie Harrison Taylor. Also that the Plaintiff is held liable for the financial loss on this project that was caused by the Plaintiff, (s) MALACO, INC.

Respectfully submitted,

Joseph Cooper
Defendant
6212 Samuel Blvd.
Suite 212
Dallas, Texas 75228
(214)- 207-4714

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with Rule 5. Federal Rules of Civil Procedure on this 18 day of October, 2001